Filed 12/12/08 In re B.L. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re B.L., a Person Coming Under the Juvenile Court Law. _____ THE PEOPLE, Plaintiff and Respondent, v. B.L., Defendant and Appellant.	B203885 (Los Angeles County Super. Ct. No. JJ15295)

APPEAL from an order of the Superior Court of Los Angeles County. Robert Ambrose, Judge. Affirmed.

Jeanine G. Strong, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown. Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lance E. Winters, and Peggy Z. Huang for Plaintiff and Respondent.

B.L. appeals an order directing that he remain a ward of the juvenile court pursuant to Welfare and Institutions Code section 602 and ordering B.L. to participate in Camp Community Placement based upon the finding he possessed cocaine base for sale in violation of Health and Safety Code section 11351.5.

We reject B.L.'s contention the evidence does not support the juvenile court's finding and affirm the order.

BACKGROUND

1. *The evidence presented by the People.*

On June 21, 2006, Arturo Huerta, a probation officer at Los Padrinos Juvenile Hall, was working with the intake of male juveniles. During the process of changing into custody clothes, B.L. was in the shower with a towel around his waist. B.L. was wearing boxer shorts and socks. Huerta told B.L. to put his clothes in the property bag. "When he pulled off his sock, [B.L.] recovered something, but he dropped it." B.L. picked the object up quickly and attempted to place it in his buttocks. B.L. said, "It's not a big deal." Huerta replied, "If it's not a big deal, put it in your property bag . . . ." When B.L. put the object in his property bag, Huerta removed it and delivered it to the police. Huerta admitted the shower area was not inspected before B.L. entered and that B.L. was searched by the Los Angeles police officers prior to his arrival at juvenile hall.

During the initial property receipt process, Huerta inventoried B.L.'s possessions. B.L. said he had been arrested with $400 or $500 and asked Huerta for his money. However, B.L. was arrested with only $54.

A criminalist testified the object contained cocaine base with a net weight of 2.95 grams.

Los Angeles Police Detective Patrick Foreman expressed the opinion that B.L. possessed the cocaine recovered in this case for the purpose of sale based on the weight of the substance and the manner in which it was packaged. Foreman testified this amount of cocaine is referred to as "an eight ball" and is worth "almost three hundred dollars . . . ." Foreman testified even a heavy user would not require this amount of cocaine for personal use and that an individual "would die if he tried to do that much rock

cocaine." Foreman noted B.L. possessed no drug paraphernalia and he was arrested with $54 consisting of numerous small bills, "a lot of ones, a ten, and some fives." which was consistent with sales of narcotics.

2. *Defense evidence*.

B.L. testified he found the drugs on the floor of the shower when Huerta stepped into an office. When Huerta returned, B.L. gave the drugs to Huerta. B.L. denied that he asked Huerta about $400 or $500. B.L. testified he was searched twice before he arrived at juvenile hall. In both of these searches, the officers paid specific attention to B.L.'s socks and would have found the object had it been there.

3. *Findings and disposition.*

The juvenile court found B.L. possessed the cocaine base for the purpose of sale and ordered B.L. to participate in a six-month camp community placement.

CONTENTIONS

B.L. contends there was insufficient evidence to establish either possession of the cocaine or the intent to sell. B.L. further contends it was physically impossible or inherently improbable that he carried the cocaine into juvenile hall in his sock.

DISCUSSION

1. *General principles.*

When determining whether the evidence was sufficient to sustain a delinquency petition, "our role on appeal is a limited one." (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) "[T]he test . . . is 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citations.]" (*People v. Holt* (1997) 15 Cal.4th 619, 667.) "We draw all reasonable inferences in support of the judgment." (*People v. Wader* (1993) 5 Cal.4th 610, 640.) Reversal is not warranted unless it appears that " 'upon no hypothesis whatever is there sufficient substantial evidence to support [the allegations of the petition].' " (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) The testimony of a single witness is sufficient to support a factual finding unless the testimony is inherently

improbable or physically impossible. (*People v. Young* (2005) 34 Cal.4th 1149, 1181; *People v. Scott* (1978) 21 Cal.3d 284, 296.)

2. *The evidence demonstrated B.L.'s possession of the cocaine.*

B.L. contends Huerta admitted he did not see the object fall from B.L.'s sock and conceded no one had done a sweep of the shower area before B.L. entered. B.L. argues the ability to perceive is fundamental to the reliability of the testimony of the witness. According to B.L., Huerta's testimony established nothing more than transitory possession. (*People v. Martin* (2001) 25 Cal.4th 1180, 1191.)

B.L.'s argument misstates the evidence. Huerta admitted on cross-examination that he did not see the object B.L. pulled from his sock but stated he saw it fall when B.L. removed his sock. Huerta also saw B.L. attempt to conceal the object. This amounted to a furtive gesture that suggested consciousness of guilt, which established knowledge of the narcotic nature of the object. (*People v. Tripp* (2007) 151 Cal.App.4th 951, 956.)

In sum, there was sufficient evidence to permit the juvenile court to conclude that B.L.'s possession of the cocaine was more than momentary or transitory possession. (*People v. Martin*, supra, 25 Cal.4th at p. 1191.)

3. *The juvenile court properly relied on expert opinion testimony to find B.L. possessed the cocaine with the intent to sell.*

B.L. contends there was insufficient evidence of intent to sell. He argues the cocaine recovered in this case consisted of one large rock and was not individually wrapped or packaged for sale. Further, B.L. had no packaging material, pay-owe sheets, cell phone or weapon. According to B.L., the failure of the expert to estimate the number of uses that could be obtained from the recovered drugs rendered his opinion unreliable.

It is settled that an expert may opine as to whether narcotics are possessed for the purposes of sale based upon such matters as the quantity, packaging and normal use of an individual. (See *People v. Newman* (1971) 5 Cal.3d 48, 53, disapproved on another point in *People v. Daniels* (1975) 14 Cal.3d 857, 862; *People v. Harris* (2000) 83 Cal.App.4th 371, 374-375; *People v. Parra* (1999) 70 Cal.App.4th 222, 227; *People v. Carter* (1997) 55 Cal.App.4th 1376, 1378.)

Here, Detective Foreman testified the cocaine recovered in this case was possessed for sale based on the quantity recovered, the manner in which it was packaged, the lack of paraphernalia and the assortment of bills B.L. had at the time of arrest. The trial court properly could rely on this opinion testimony to find B.L. possessed the cocaine for the purpose of sale.

B.L. claims the cocaine recovered in this case consisted of one large rock. However, this misstates the evidence in that the recovered baggie contained several individual pieces of rock cocaine. Foreman testified a seller of rock cocaine typically purchases a large rock which he or she breaks into smaller rocks for sale. Because the cocaine recovered in this case was not in the form of a single large rock, this circumstance supported Foreman's opinion the cocaine was possessed for sale.

B.L. also argues Foreman's opinion was suspect because he could not determine the exact number of individual doses of rock cocaine that were in the baggie. However, Foreman testified only that a heavy user of rock cocaine smokes approximately five rocks a day and he could not determine, merely by "looking at it, how many individual pieces of rock cocaine are in here . . . ." This testimony does not detract from Foreman's opinion the cocaine was possessed for sale.

4. *The evidence does not demonstrate physical impossibility*.

B.L. contends the fact he was searched by the police before he entered juvenile hall rendered it physically impossible or inherently improbable that he carried rock cocaine into juvenile hall in his sock. B.L. also claims it would have been physically impossible to conceal the drugs in his buttocks because he was holding a towel around his waist and was wearing boxer shorts.

These claims are meritless. The fact B.L. was searched by the police prior to his arrival at juvenile hall does not render it impossible that he could have carried the cocaine into juvenile hall. With respect to B.L.'s boxer shorts argument, Huerta testified only that B.L. attempted to conceal the object. The fact B.L. was unsuccessful in attempting to conceal the object, whether due to the boxer shorts or otherwise, does not render B.L.'s possession of the drugs inherently improbable.

DISPOSITION

The order directing that B.L. remain a ward of the juvenile court is affirmed.

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KLEIN, P. J.

We concur:

KITCHING, J.

ALDRICH, J.